

#### REMARKS

Claims 38-58 are pending in the application. By this amendment, claim 55 is canceled. Applicant believes the amendments made herein add no new matter. Any amendments to the claims which have been made in this amendment, and which have not been specifically noted to overcome a rejection based on prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to be attached thereto. Reconsideration and reexamination of the application is respectfully requested in view of the amendments and the following remarks.

Claims 38-58 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 3-20 and 40-41 of copending Application No. 10/595,113. This rejection is respectfully traversed.

It is noted that the Office Action does not articulate which of the claims 38-58 are held to be unpatentable or which of the claims 2-20 and 40-41 of the '113 application. However, the Examiner did represent that the claims "are not patentably distinct from each other because a "switch" from a "diverter", the claims of one anticipate the claims of another." This statement does not refer to any claims in either of the present application or the '113 application. It appears to only relate to a limitation in one or more claims of the present application and a limitation in one or more claims in the '113 application. This statement falls far short of making a prima facie case of double patenting.

The '113 application was issued as U.S. Patent No. 7,685,671 on March 30, 2010. Therefore, Applicant will address the double patenting rejection as nonprovisional rejection with respect to the claims of the '671 patent (the Reference Claims).

A non-statutory obvious-type double patenting is appropriate where the conflicting claims are not identical, but at least one examined claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over the reference claims(s). MPEP § 804 II B.1. Applicant believes that all of the claims in this application are patentably distinct from all of the claims of the reference patent, and the Office has so held the claims to be distinct in a restriction requirement in this

application. Claims 38 and 48 are the two independent claims in this application which have been allowed. Claim 38 relates to a floor cleaner for cleaning both wet and dry floors and includes a nozzle assembly that is adapted to remove debris from a surface to be cleaned in a dry mode and a wet section mode and a switch mechanism for selectively converting the nozzle assembly from the wet suction mode to the dry suction mode and vice versa. In addition, claim 38 calls for an actuator on the handle operatively connected to the switch mechanism for selectively positioning the nozzle assembly in the dry suction mode and the wet suction mode.

Claim 48 of the present application calls for a base assembly including a nozzle adapted to remove moisture and debris from a surface to be cleaned and an agitator for agitating the surface to be cleaned. The agitator is movable between a first position wherein the agitator is spaced from the surface to be cleaned and a second position wherein the agitator contacts the surface to be cleaned to agitate the surface to be cleaned. Further, an actuator mechanism selectively controls the movement of the actuator between a first and second position and an actuator knob is rotatably mounted on the handle and is operably connected to the actuator mechanism and selectively moves the agitator between the first and second positions. None of these claims call for two nozzles and diverter between the two nozzles.

There are also two independent Reference Claims. Claim 1 relates to a wet/dry bare floor cleaner and calls for a wet suction nozzle and a dry suction nozzle and a diverter mounted in a working air conduit moveable between a dry suction position and a wet suction position for selectively at least partially blocking air flow from the wet suction nozzle to the dry suction nozzle respectively to a recovery tank and coupled to the handle such that movement of the handle moves the diverter between the dry suction position and the wet suction position. There are no claims in the present application that have these limitations.

Independent reference claim 4 calls for a wet/dry bare floor cleaner also including a wet suction nozzle and a dry suction nozzle, a diverter mounted in a working air conduit movable between a dry suction position and a wet suction position for selectively at least partially blocking working air flow from the wet suction nozzle to the dry suction nozzle respectfully to the recovery tank and further calls for an actuator mounted to the handle and connected to the

diverter to move the diverter between the dry section position and the wet suction position and including a connector between the handle and the diverter so that the diverter moves between the dry suction position and the wet suction position as the handle rotates between the dry suction position and a wet suction position. There are no claims in the present application that have these features.

Applicant believes that the claims in the present application are patently distinct from the Reference Claims because the claims in the present application do not call for a wet suction nozzle, a dry suction nozzle, a diverter or an actuator mounted to a handle for operating a diverter as required by the Reference Claims. Conversely, the Reference Claims do not call for a switch mechanism for selectively converting a nozzle assembly from a wet section mode to a dry suction mode as required by claim 38 of the present application. In addition, the Reference Claims do not call for an actuator on the handle operatively connected to the switch mechanism for selectively positioning the nozzle assembly in the dry suction mode or the wet suction mode, also as required by claim 38 of the present application. Further, the Reference Claims do not call for an agitator moveable between a first position wherein the agitator is spaced from the surface to be clean in a second position where the agitator contacts the surface to be cleaned to agitate the surface, and further do not call for an actuator mechanism for selectively controlling the movement of the actuator between first and second position and an actuator knob rotatably mounted to handle and operatively connected to the actuator mechanism for selectively moving the agitator between the first and second positions as required by independent claim 48.

It is clear from the foregoing that the claims of the present application are patentably distinct from the claims in the reference patent.

The Examiner may believe that one or more of the Reference Claims anticipates one or more of the claims of the present application. If so, the Examiner is requested to kindly articulate which Reference Claims, if any, anticipate which claims of the present application and give a reasoned statement as to why the Reference Claim or Claims anticipate the claim or claims of the present application. In so far as Applicant is aware no such anticipation exists. For example, Reference Claim 1 required a diverter coupled to the handle so that movement of the handle

moves the diverter from a dry suction position to a wet suction position. The limitation of Applicant's claim 38 that "an actuator on the handle operably connected to the switch mechanism for *selectively positioning* the nozzle assembly in the dry suction mode and the wet suction mode" does not read on Reference Claim 1 because this limitation does not read on a coupling of the handle to the diverter to move the diverter between a wet and dry suction positions. The handle in Reference Claim 1 has no actuator on the handle as in Applicant's claim 1. Reference Claim 4 has a similar limitation that requires an actuator coupled to the diverter to move the diverter between wet and dry suction positions by movement of the handle. Applicant's claim 38 does not read on Reference Claim 4.

Claims 1-37 of the present application were the subject to a restriction requirement in the Office Action mailed February 11, 2008, by Examiner Wilson. In the Office Action, the Examiner held that:

1. This application contains claims directed to the following patentably distinct species
  - a. Group 1: claims 1-31
  - b. Group 2: claims 32-54
  - c. The species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species. In addition, these species are not obvious variants of each other based on the record.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. *Currently, none of the claims are generic.* (Emphasis added.)

*Office Action mailed Feb. 11, 2008, p2.*

In response to the restriction requirement, Applicant pointed out that the Examiner probably meant claims 1-37 rather than claims 1-31 in group 1 and claims 38-54 in group 2 since claims 32-37 were dependent on claim 31. In the Office Action mailed September 26, 2008, Examiner Wilson noted the error in listing the claims and made the restriction requirement final by withdrawing claims 1-37 from consideration.

Claims 1-37 are similar to the claims in the reference patent in that they call for a wet/dry floor surface cleaning having both a dry suction opening and a wet suction opening, a working air conduit extending from each of the dry suction opening and the wet suction opening to a recovery tank and a diverter mounted in the working air conduit and movable between a dry

suction position and a wet suction position for selectively at least partially blocking working air flow from the dry suction opening of the wet suction opening respectively to the recovery tank. Further, claim 1 calls for an actuator mounted on at least one of the handle and the base and operably connected to the diverter for selectively positioning the diverter in the dry suction position. Independent claim 16, 26, and 31 have similar limitations except that claim 31 does not call for a diverter but does call for a wet suction conduit and a dry suction conduit to be vertically juxtaposed to each other. None of these limitations are found in the claims of the present application. Applicants believe that the Examiner has previously ruled that the subject matter of claims 38-54 of the present application are patentably distinct from the Reference Claims due to the similarity between the Reference Claims and claims 1-37 of the present application as filed.

For at least the reasons discussed above, Applicant respectfully requests withdrawal of the double patenting rejection and allowance of the claims. Early notification of allowance is respectfully requested. If there are any remaining issues that the Examiner believes may be resolved in an interview, the Examiner is respectfully invited to contact the undersigned.

Respectfully submitted,

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